

Fair Political Practices Commission
MEMORANDUM

To: Chairman Getman, Commissioners Downey, Knox, Scott and Swanson

From: Carla Wardlow, Chief
Technical Assistance Division
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Date: December 31, 2001

Subject: Review of Conflict of Interest Disclosure

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At the November 5 meeting, the Commission approved as one of its objectives for 2002 a review of the Commission's role in the preparation and review of conflict of interest codes and timely filing of statements of economic interests by public officials and employees. The purpose of this memorandum is to provide background and historical information as well as to describe current procedures related to adoption and review of conflict of interest codes and the filing of statements of economic interests.

Background

In its statement of purposes, the Act declares the following:

“Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.”

Section 81002(c).¹

The Act accomplishes this purpose in two ways. It prohibits public officials from making, participating in making, or attempting to influence governmental decisions when their personal financial interests may foreseeably be materially affected by those decisions. In addition, public officials must disclose those personal financial interests that may give rise to a conflict of interest.

The conflict of interest disqualification provisions are located in article 1 of chapter 7 of the Act, beginning with section 87100. In May 1998, the Commission initiated a “Conflict of Interest Regulations Improvement Project,” to restructure and simplify the

¹ All references are to the Government Code unless otherwise noted.

regulations relating to disqualification. That project, for the most part, was completed in December 2000.

The conflict of interest disclosure requirements are set out in articles 2 and 3 of chapter 7. Article 2, beginning with section 87200, sets out disclosure requirements for state and local officials with broad policymaking powers and imposes what we refer to as “full disclosure,” i.e., all investments, interests in real property, business positions, and sources of income except as excluded under other provisions of the Act. The following state and local officials (and candidates for the elective offices) are included in section 87200:

- Elected state officers
- Judges and court commissioners
- Members of the Public Utilities Commission
- Members of the State Energy Resources Conservation and Development Commission
- Members of the California Coastal Commission
- Members of the Fair Political Practices Commission
- Members of boards of supervisors
- Mayors and members of city councils
- County and city planning commissioners
- County counsels, district attorneys, and city attorneys
- County treasurers and chief administrative officers of counties
- City managers, city treasurers, and chief administrative officers of cities
- Public officials who manage public investments

For all other state and local officials and employees, the Act requires that disclosure be imposed only on officials and employees who possess decisionmaking authority and that it be tailored to the types of decisions they make. (Section 87309.)² Thus, the Act establishes a requirement that every state and local agency adopt a conflict of interest

² In 1970, a much broader financial disclosure law (Gov. Code sections 3600-3704) was challenged and struck down as an overbroad intrusion into the right of privacy. The law required the same level of disclosure for the Governor as for a member of a local library board and drew no distinctions between the level of decisionmaking by those officials. (*City of Carmel-By-The-Sea v. Young* (1970) 2 C.3d 259, 85 Cal.Rptr. 1.) In 1973, the Legislature enacted a new disclosure law (Gov. Code section 3600, *et seq.*) The law applied broad disclosure obligations on certain high-ranking officials and left the disclosure requirements for other public officials to their respective agencies. The 1973 law aimed at requiring disclosure only if the official’s interests could be affected by his or her official actions. This law was upheld by the courts (*County of Nevada v. MacMillen* (1974) 11 C.3d 662, 114 Cal.Rptr. 345) but it was repealed by passage of the Political Reform Act of 1974.

In the *Alperin* opinion the Commission held that subdivision (c) of section 87309 prohibits an agency from requiring disclosure of financial interests which may not foreseeably be affected materially by decisions of employees in their designated positions. (*In re Alperin* (1977) 3 FPPC Ops. 77.) The Commission staff, therefore, advises that public agencies follow the specific tailoring directive in *Alperin* in drafting their codes. “[T]he Commission or any other code reviewing body may not approve an agency’s conflict of interest code if the code requires more disclosure than is required by the Act.” (*Hoffman* Advice Letter, No. A-98-084; also see *Marks* Advice Letter, No. A-98-073; and *Rypsinka* Advice Letter, No. I-90-513.)

code as specified in article 3 of chapter 7 and that the codes be formulated at the most decentralized level possible. (Sections 87300-87301.) Each agency must determine which of its officers and employees should be designated in the agency's code and specify the categories of financial interests they must disclose. For example, many state and local agency employees make no decisions in the course of their official duties that could foreseeably have an impact on real property. Accordingly, their conflict of interest codes should not require them to disclose real property interests. An employee who purchases office supplies for an agency should be required to disclose investment interests in business entities of the type that manufacture or sell office supplies, and not investments in other types of businesses.

Once a conflict of interest code is adopted or approved by an agency, it must be reviewed by the agency's "code reviewing body." (Section 87303.) The board of supervisors is the code reviewing body for county agencies and for local agencies with jurisdiction in a single county, and the city council is the code reviewing body for city agencies. The Commission is the code reviewing body for state agencies³ and all agencies that have jurisdiction in more than one county (multi-county agencies). (Section 82011.) A state or multi-county agency may request an exemption from the requirement to adopt a conflict of interest code if the agency would have no designated employees or if it is or will soon be inoperative and nonfunctioning. (Regulation 18751.)

In the early years of the Commission's existence, conflict of interest codes were placed on the Commission's meeting agendas⁴ and reviewed in public session. Although section 87302 sets out the required content for conflict of interest codes, every code was different. In 1980, the Commission adopted a "model" conflict of interest code that contains all of the provisions specified in section 87302. (See regulation 18730.) All state agencies and most local agencies now simply incorporate the regulation as the body of their conflict of interest codes and attach a list of designated employees and their assigned disclosure categories. If regulation 18730 is amended to incorporate legislative changes to the Act, those amendments are automatically incorporated into every code. This greatly streamlined and simplified the review process. In 1987, the Commission delegated to the Executive Director the authority to review and approve conflict of interest codes for which the Commission is the code reviewing body. (Regulations 18750 and 18750.1.)

Conflict of interest codes must be amended when changes occur, such as the addition of new positions in an agency or changes in the duties assigned to designated employees. (Section 87306-87307.) In addition, agencies must review their codes every other year and notify the code reviewing body whether the code is up-to-date or needs to be amended. State agencies must submit these "biennial notices" by March 1 of every odd-numbered year and local agencies must submit them by October 1 of even-numbered years. (Sections 87306 and 87306.5; Regulation 18736.) An officer, employee, member

³ The Attorney General is the code reviewing body for the Commission's conflict of interest code.

⁴ In the 1970's and early 1980's, the Commission held two three-day meetings every month.

or consultant of an agency, or a resident of the jurisdiction, also may petition an agency to amend its code. (Section 87307.)

Conflict of interest codes of state agencies must be publicly noticed as specified in the Administrative Procedure Act, both when they are formulated by the agencies and when they are reviewed by the Commission. (Section 87311.) The preparation and review of codes formulated by local agencies and by agencies in the judicial branch must be “carried out under procedures which guarantee to officers, employees, members, and consultants of the agency and to residents of the jurisdiction adequate notice and a fair opportunity to present their views.” (Sections 87311 and 87311.5.)

The Act establishes deadlines for the adoption or amendment of conflict of interest codes. A new agency must submit a code no later than six months after it comes into existence. (Section 87303.) Amendments must be submitted within 90 days after changes necessitating an amendment become apparent. (Section 87306-87307.) If a state or local agency fails to adopt a conflict of interest code or amendment, the code reviewing body, the Commission, or a superior court may take action to adopt or order the adoption of a code. (Sections 87304, 87305, and 87307.)

In 1998, the California Research Bureau of the State Library issued a report entitled “Local Government Ethics Ordinances in California.” The report states that California has approximately 7,000 units of local government, including special districts, cities and counties. Currently, there are approximately 200 state agencies, including boards and commissions. Commission staff estimates that there may be as many as 100,000 state and local officials and employees who are subject to disclosure under the Act.

The Role of the Commission

The Commission has primary responsibility for the administration and implementation of the Act. (Section 83111.) The Commission also enforces the disclosure and disqualification provisions of chapter 7 (section 91001) and may take action to compel any agency to adopt or amend a code. (Sections 87304, 87305, and 87307.) In addition, the Commission is the code reviewing body for conflict of interest codes adopted by state and multi-county agencies (section 82011(a)), and acts as filing officer for approximately 15,000 officials required to file statements of economic interests under the Act (section 87500). Section 87312 requires the Commission, upon request, to provide technical assistance to agencies in the preparation of their conflict of interest codes.

The Commission as Code Reviewing Body

There are approximately 200 state agencies and 700 multi-county agencies for which the Commission is the code reviewing body. Agencies must comply with the procedures set out in regulations 18750 (state agencies) and 18750.1 (multi-county agencies), including establishing a 45-day public comment period, before submitting codes or amendments to the Commission for review.

Once a code or amendment is received by the Commission, there is another 45-day public comment period, during which staff performs a detailed review of the code. As required in the regulations, an agency must submit a variety of documents along with its proposed code or amendment, including the agency's organizational chart, job descriptions of designated employees, and any written comments received during the agency's public review of the code. (Regulations 18750(e) and 18750.1(e).) Commission staff carefully analyzes these materials, particularly the organizational chart and employee job descriptions, to ensure that all decisionmaking positions are designated and that appropriate disclosure has been assigned.⁵

The Commission requires state and multi-county agencies that contract for outside services to include in their conflict of interest codes a designated position for consultants, and strongly recommends that all agencies include such a designation. Section 82048 defines the term "public official" to include consultants. Regulation 18701(a)(2) defines "consultant:"

“‘Consultant’ means an individual who, pursuant to a contract with a state or local government agency:

(A) Makes a governmental decision whether to:

1. Approve a rate, rule or regulation;
2. Adopt or enforce a law;
3. Issue, deny, suspend, or revoke any permit, license, application, certificate, approval, order, or similar authorization or entitlement;
4. Authorize the agency to enter into, modify, or renew a contract provided it is the type of contract that requires agency approval;
5. Grant agency approval to a contract that requires agency approval and to which the agency is a party, or to the specifications for such a contract;
6. Grant agency approval to a plan, design, report, study, or similar item;
7. Adopt, or grant agency approval of, policies, standards, or guidelines for the agency, or for any subdivision thereof; or

(B) Serves in a staff capacity with the agency and in that capacity participates in making a governmental decision as defined in Regulation 18702.2 or performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a

⁵ Nonsubstantive amendments to conflict of interest codes are not subject to these procedures. For example, an agency may simply be eliminating a designated position that no longer exists or updating job titles for positions already designated. (Regulation 18752.)

position specified in the agency's Conflict of Interest Code under Government Code section 87302....”

To avoid the necessity of amending a conflict of interest code each time an agency contracts for the services of a consultant, in 1978 the Commission developed the following language for its own conflict of interest code (regulation 18351), which has been used as a model for other codes:

“Consultants shall disclose pursuant to the broadest disclosure category in the code subject to the following limitation: The Executive Director may determine in writing that a particular consultant, although a “designated employee,” is hired to perform a range of duties that are limited in scope and thus is not required to comply with the disclosure requirements described in this section. Such determination shall include a description of the consultant’s duties and, based upon that description, a statement of the extent of disclosure requirements. The determination of the Executive Director is a public record and shall be retained for public inspection in the same manner and location as this conflict of interest code. Nothing herein excuses any such consultant from any other provision of this Conflict of Interest Code.”

Once review of a conflict of interest code is completed, section 87303 provides that the code reviewing body shall:

- “(a) Approve the proposed code as submitted.
- (b) Revise the proposed code and approve it as revised.
- (c) Return the proposed code to the agency for revision and resubmission within 60 days. The code reviewing body shall either approve the revised code or revise it and approve it....”

If an agency objects to requested revisions, the agency can request a hearing before the Commission. (Regulations 18750(g) and 18750.1(f).) However, staff works closely with agencies to resolve issues. If the agency agrees to recommended changes, staff incorporates the revisions pursuant to section 87303(b). Approved codes are submitted to the Executive Director for signature.

As previously stated, conflict of interest codes must be amended when changes occur and agencies are required to review their codes every other year and submit a “biennial notice” to the code reviewing body stating whether the code is up-to-date or needs amendment. (Sections 87306(b) and 87306.5.) Commission staff provides the notices to

state and multi-county agencies approximately three months prior to the deadline for filing. In addition, staff provides courtesy notices and informational materials to local code reviewing bodies to ensure that local agencies comply with section 87306.5.

Although rare, a conflict of interest code can be revised as a result of public input. In 1998, pursuant to section 87307, the United Farm Workers (UFW) petitioned the Commission for various amendments to the conflict of interest code of the California Strawberry Commission (CSC). As the code reviewing body, after public hearings on the matter, the Commission ordered specified amendments to the CSC code, increasing the disclosure requirements of its members. The CSC filed a Petition for Writ of Mandate in superior court, challenging the UFW's standing and the Commission's actions. The court denied the writ, finding that the UFW had standing to request the amendments and that the Commission's proceedings were consistent with the applicable law.

Conflict of interest code review functions are performed by political reform consultants in the Technical Assistance Division, with assistance from the General Counsel and the Legal Division. The Technical Assistance Division also provides training workshops and telephone and written assistance to state and local agencies in the process of adopting and amending conflict of interest codes. The Legal Division also responds to requests for written advice and exemption requests submitted to the Executive Director under regulation 18751 and to matters involving litigation.

The Commission as Filing Officer

The Commission is the filing officer for statements of economic interests (Form 700) filed by approximately 15,000 state and local officials. (Section 87500.) This includes the officials listed in section 87200⁶ (see page 2 of this memorandum), as well as heads of state agencies, most state board and commission members, designated employees of the State Legislature, and selected multi-county agency officials. Most other officials and employees file Form 700 with their county or city clerk, or their agency, who is the filing officer.

Candidates for offices specified in section 87200 must file Form 700. (Section 87201.) A Form 700 is required when an official or designated employee assumes office or becomes subject to a conflict of interest code, and when he or she leaves office. (Sections 87202, 87204, and 87302(b).) For each year that an official or designated employee holds office, an "annual" Form 700 must be filed. (Sections 87203 and 87302(b).) As a result, approximately 20,000 filings are processed by the Commission each year. Annual forms are filed on March 1 and April 1, and the others are filed throughout the year.

⁶ The Attorney General is the filing officer for statements of economic interests filed by members of the Fair Political Practices Commission. (Section 87500(h).) In addition, local officials who are defined as "public officials who manage public investments" under section 87200 do not file with the Commission.

Section 81010 states that, with respect to reports and statements filed with him or her, the filing officer shall:

- “(a) Supply the necessary forms and manuals prescribed by the Commission;
- (b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this title;
- (c) Notify promptly all persons and known committees who have failed to file a report or statement in the form and at the time required by this title;
- (d) Report apparent violations of this title to the appropriate agencies; and
- (e) Compile and maintain a current list of all reports and statements filed with this office.”

Filed forms are public documents and filing officers also must make them available to the public and retain them for seven years, except that forms filed by elected state officers must be retained indefinitely. (Sections 81008 and 81009(d) and (e).) Filing officers also have authority to impose late filing penalties under section 91013 if an original statement is received after its filing deadline. For statements of economic interests, the penalty is \$10 per day up to a maximum of \$100. Filers also can be subject to administrative penalties, up to \$5,000 per violation, through the Act’s enforcement provisions. The duties of filing officers and filing officials are further spelled out in regulation 18115.

In all cases except for designated employees of the Legislature and retired judges serving on assignment, officials and employees whose Form 700s are filed with the Commission initially file their forms with an intermediary (a “filing official”), who retains a copy of the form and forwards the original to the Commission (the “filing officer”) within five working days. (Section 87500; regulation 18115(b).) For example, city officials listed in section 87200 file with the city clerk, who forwards their forms to us. This requires Commission staff to maintain contact with filing officials in every county, city, and court, as well as all state agencies—about 1,000 in all.

Forms received by the Commission are date-stamped and logged. (Section 81010(b) and (e).) As part of its “Y2K” update, the Commission contracted for development of a database for tracking the forms it receives. The database went online in April 2000. Information about each filer is logged into the database, including the filer’s name, address, position, telephone number, etc. As statements are filed, the type of statement (candidate, assuming office, annual, leaving office, amendment), the year of the statement, the date filed, and its due date are logged, and if the statement is late, the database calculates the number of days late. During review and processing, information is added about amendment requests, late fines, and enforcement referrals. Various reports can be run from the system, including the number of filers in each category, the number of statements filed in each category, late filings, amendment requests, etc. (See

Exhibit A.) However, it should be noted that the economic interests disclosed on the Form 700s filed with the Commission are not entered into the database, nor is it designed for that purpose.

The database is continually updated. Filing officials are required to notify the filing officer within 10 days of events affecting the filing of statements of economic interests, such as elections and vacancies. (Regulation 18115(b)(3).) In addition, by February 1, filing officials must notify the filing officer of the names and positions of every filer whose statements are forwarded to the filing officer. (Regulation 18115(b)(4).) In October, staff sends each filing official a list of the names and positions of filers whose statements are forwarded to the Commission. (See Exhibit B.) The filing official verifies the information and provides any updates. For designated employees of the Legislature, who file directly with the Commission, staff receives monthly reports of employee changes from the Senate and Assembly rules committees.

Filers who file after the deadline are sent a “late fine” notice pursuant to section 91013. Under section 91013(a), a filing officer can reduce or waive late filing penalties if he or she determines the late filing was not willful and enforcement will not further the purposes of the Act. Filers are given an opportunity to request a waiver of their fine, and those requests are granted or denied according to specific guidelines approved by the Commission in 1979 (amended in 1983 and 1986). (See Exhibit C.) Unpaid fines are collected through the Franchise Tax Board’s Tax Intercept program, which deducts the outstanding fine before sending tax refunds to the filer.

After the annual filing deadlines, a list of officials who have failed to file statements (nonfilers) is generated from the database. These officials are notified by letter of their duty to file and the potential penalties. (Section 81010(c).) If the official files, the statement is processed as a “late filing,” except that no waiver can be granted if the filer does not respond within 30 days to specific written notice of his or her failure to file. (Section 91013(a); see Exhibit D.) If the official fails to file after two written notices, the matter is referred to the Enforcement Division. (Section 81010(d).) In 2000, the Commission decided to place new emphasis on timely enforcement of the Form 700 filing requirements. The Enforcement Division implemented a streamlined program for following up on nonfilers, including those that are required to file with a filing officer other than the Commission. That program, and its initial results, were described in an article published in the August 2001 FPPC Bulletin. (See Exhibit E.)

Form 700s filed with the Commission are also reviewed and amendments are requested when there are errors or information is missing from the statement. (Section 81010(b).) Regulation 18115 provides that all statements of economic interests must receive a “facial review,” and that at least 20 percent of statements that are filed on time receive a “full review.” (All late filings receive a full review.) A facial review ensures that the cover page is correctly completed and includes the filer’s signature, that schedules the filer indicates are attached are included in the statement, and that the statement is legible.

A full review includes a review of each schedule to ensure that the information disclosed is complete and whether information included on one schedule indicates that another schedule should have been completed. For example, a filer who reports selling a piece of real property on Schedule B of Form 700 may be required to disclose the purchaser as a source of income on Schedule C. Commission staff routinely conducts a full review on every assuming office statement received, as well as all statements filed by elected state officers. Although it is not required by the Act or regulation 18115, for elected state officers, staff also compares each filer's annual statement with the previous year's statement to ensure that information is correctly reported from year to year. If necessary, amendments are requested. (See Exhibit F.) Any apparent violations of the Act are referred to the Enforcement Division (e.g., violations of the gift limit). (Section 81010(d).)

As previously indicated, as filing officer, the Commission must provide public access to Form 700s filed with the agency. Under section 81008(a), the forms must be made available upon request no later than the second business day following the date they are received. During 2001, staff filled over 3,000 requests for copies.

Filing officer duties are performed by the Technical Assistance Division. The division also provides telephone and written assistance to all public officials and employees required to file statements of economic interests, and to filing officials and filing officers. The Legal Division also responds to requests for written advice.⁷

Education and Outreach

As mentioned previously, Commission staff provides telephone and written advice to all affected officials related to conflicts of interest and disclosure. Staff of the Technical Assistance Division conducts various seminars and workshops throughout the state. Each year, seminars and workshops are conducted for agencies in the requirements for adopting conflict of interest codes, for filers in completing statements of economic interests, and for filing officers and filing officials. The Legal Division conducts workshops on conflict of interest issues for various state and local agencies and organizations, such as the League of Cities, California State Association of Counties, the California School Boards Association, etc., and recently conducted two workshops for high-level state officials in coordination with the Governor's office and the Attorney General's office. The Legal Division also works closely with the Attorney General's staff in developing the ethics training program required for state officials under section 11146.1, updated in November of 2001.

In a 1998 report by the Bureau of State Audits, it was determined that local filing officers received little oversight in performing their duties under the Act and that the Commission

⁷ Under Regulation 18740, an official may request from the Executive Director an exemption from disclosing sources of income to a business entity under section 87207(b) if disclosure of a person's name would violate a legally recognized privilege under California law. These exemption requests are processed by the Legal Division.

did not have the necessary resources to fill that need. In late 1999, the Commission received additional funding to conduct a filing officer outreach program. Since early 2000, staff of the Technical Assistance Division has visited 100 state, county, city, and other local officials who perform filing officer duties for statements of economic interests.⁸ In many cases, these visits are made at the filing officer's request, though some are scheduled based on concerns about a particular filing officer's performance (for example, a filing official who, despite repeated requests, fails to forward required statements to the Commission). During each visit, staff conducts a one-on-one workshop with the filing officer on his or her duties under the Act, reviews the filing officer's procedures, makes recommendations, and answers any questions. Staff also performs an informal review of each local agency's conflict of interest code and recommends appropriate changes. Follow-up meetings are scheduled, either in person or by telephone, when necessary. The program has been very well received by the filing officers.

Issues

During 2001, several issues were raised related to conflicts of interest. Some criticized the delay in filing statements of economic interests by newly appointed high-level officials, the failure of certain consultants to file statements, and the length of time needed by new agencies to adopt a conflict of interest code.

Assuming Office Statements of Economic Interests

Officials specified in section 87200 file Form 700 within 30 days of assuming office, or within 10 days of appointment or nomination if the position is subject to senate or judicial confirmation. Officials appointed to an agency with an existing conflict of interest code file Form 700 within 30 days of assuming office, or within 30 days of appointment or nomination if the position is subject to senate confirmation. However, officials appointed to a newly-created agency have no duty to file Form 700 until 30 days after the agency's conflict of interest code is adopted and approved unless they fall under the section 87200 category of "public officials who manage public investments." The Commission may want to review whether to require earlier filing by high-level officials appointed to newly created boards, commissions, or other agencies.

Disclosure by Consultants

There was some confusion about the filing obligations of individuals hired as consultants to state agencies. The Commission provides information about consultants in its workshops on conflict of interest codes and its outreach program to filing officers. The Commission may want to review whether additional training in this area is needed.

⁸ Approximately 100 outreach meetings also have been conducted with filing officers who receive campaign disclosure statements filed under the Act.

Disclosure and Conflicts of Interest

There also was a great deal of misunderstanding about when an official has a conflict of interest under the Act. Simply possessing an interest in a particular type of business entity does not mean that an official automatically has a conflict nor does it mean that the official is disqualified from holding a particular position. In addition, the Commission does not monitor the daily decisionmaking activities of the 15,000 public officials who file with us. Nonetheless, all public officials must disqualify themselves from making, participating in, or influencing decisions that have a reasonably foreseeable financial effect on the official's economic interests, regardless of whether the official has filed or is obligated to file a Form 700.

Technical Assistance or Binding Advice

The Commission is empowered to provide assistance to agencies and public officials in administering the provisions of the Act. (Section 83113(c).) Also, as mentioned earlier, the Commission must, upon request, provide technical assistance to agencies in the preparation of conflict of interest codes. (Section 87312.) It has been the Commission staff's experience that local code reviewing bodies and employees of local agencies who disagree with their agency's determination increasingly ask the Commission to render advice concerning determinations that must be made by the code reviewing body. For example, a decision about whether a new agency or a subdivision of an agency must create a new conflict of interest code or not is a determination that must be made by the code reviewing body. The Commission may want to explore whether sufficient resources are being allocated at the local level to this function.

Creation of New Governmental Entities

Staff has established procedures with the legislature and the Governor's office to receive notification when a new state agency is created, either by legislation or executive order. This allows us to monitor the adoption of conflict of interest codes by state agencies.

Another issue brought to the Commission by the League of California Cities recently is the possible codification of one of the Commission's opinions. In *In re Siegel* (1977) 3 FPPC Ops. 62, the Commission set out various factors that, when applied to private entities, can result in the treatment of those private entities as local governmental entities. That then triggers conflict of interest code questions and concerns about the reporting and disqualification of individuals connected with those private entities. Though the Legal Division does not disagree that exploring this issue has merit, when the staff worked on this issue in 1996, consensus on the scope of the regulation was not reached. Therefore, staff has continued to rely on two Commission opinions to advise members of the public on a case-by-case basis. (Also see *In re Vonk* (1981) 6 FPPC Ops. 1, which applies to determine when an entity is a "state" agency.)

Role of Control Agencies

Members of the public have suggested that at the state level, the role of control agencies, such as the State Personnel Board and Department of Personnel Administration (DPA), should be increased. For example, are the duties of certain civil service classifications so broad that they warrant full disclosure? Should the classification descriptions refer to “decisionmaking” functions somehow? Should certain civil service classifications, such as personnel analyst, make specific reference to the administration of conflict of interest codes and statement of economic interest filings to ensure agencies designate individuals to perform these duties? Should DPA include in training courses for personnel and other analysts what the Act requires in this area? At the Commission level, regulation 18730 provides that designated employees include persons “holding positions” listed. Sometimes there is confusion about whether this refers to “working titles” or civil service classifications. It may be useful to clarify whether agencies may designate a “working title” in a code, or whether their analysis is based on what a civil service classification provides is the employee’s level of responsibility.

Resources (FPPC and Other Agencies)

An important consideration in discussing these issues is whether the FPPC and other agencies have sufficient resources to implement their current duties in this area. Two and one-half political reform consultant positions in the Technical Assistance Division are currently used for review of conflict of interest codes. Six full-time positions and one part-time position are utilized for filing officer functions, and three positions perform filing officer outreach (both in the campaign and statement of economic interests areas), although two positions currently are vacant.

In late 2000, the Commission received additional funding to establish the Public Education Unit. Among other things, the unit has been setting up a central file of state and local conflict of interest codes. Staff also is actively pursuing online filing of the Form 700, including addressing privacy concerns expressed by officials about having their personal financial interests disclosed on the Internet.

At the local level, where the Commission is not the code reviewing body, staff would like to increase oversight and education in the code adoption process, including the development of model disclosure categories for local agencies. It appears from information we have received that in many cases, employees are included in codes when they should not be, and that agencies are assigning all employees full disclosure rather than tailoring disclosure categories to the types of decisions they make. It is uncertain whether the Commission will have sufficient resources to do this.